IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

WP(C).No. 9483 of 2007(D)

PETITIONER:

P.V.RADHAKRISHNA PILLAI,VIDYA CONSTRUCTIONS,VAISHNAVI HOUSE (37/1703A), KUMARANASAN NAGAR,KADAVANTHRA,KOZHI-20, ERNAKULAM DISTRICT.

BY ADV. SRI.V.P.SUKUMAR
SRI.V.DEVANANDA NARASIMHAM

RESPONDENTS:
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1. THE INTELLIGENCE OFFICER (IB), COMMERCIAL TAXES,MATTANCHERY,OFFICE AT PALARIVATOM KOCHI-25,ERNAKULAM DISTRICT.

2. THE DEPUTY COMMISSIONER,COMMERCIAL TAXES,MATTANCHERRY.

BY GOVT.PLEADER SRI.MOHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON ON 21/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX:

PETITIONER'S EXHIBITS:

EXT.P1- TRUE COPY OFH TE NOTICE DATED 11-5-2006 ISSUED U/S 45A OF HTE KGST ACT ISSUED TO HTE PETITONER BY HTE IST RESPONDENT.

EXT.P2- TRUE COPY OF THE REGISTERED LETTER DATED 18-5-2006 SENT TO THE IST RESPONDENT BY THE PETITIONER,

EXT.P3- TRUE COPY OFHTE PENALTY ORDER DATED 1-6-2006 ISSUED TO THE PETITIOENR BY THE IST RESPONDENT.

EXT,.P4- TRUE COPY OF THE APPLICATIONS FOR REVISION DATED 7-7-2006 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P5- TRUE COPY OF THE STAY PETITION DATED 7-7-06 FILED BY HTE PETITIOENR BEFORE THE 2ND RESPONDENT.

EXT.P6- TRUE COPY FO HTE TDS CERTIFICATE DATED 20-2-2006.

EXT.P6-2- TRUE COPY OF HTE TDS CERTIFICATE DATED 20-2-2006.

EXT.P6-3- -DO-

EXT.P6-4-DO.

EXT.P6-5- -DO

EXT.P6-6—DO.

EXT.P6-7- DO.

EXT.P6-8- DO.

EXT.P6-9-DO.

EXT.P6-10- DO.

EXT.P7- TRUE COPY OF THE TDS CERTIFICATE DATED 9-10-2006 ISSUED BY HTE AWARDER FOR THE YEAR 2002-2003.

EXT.P7-2- DO. DATED 16-2-2006.

EXT.P7-3- DO DATED 4-2-2002.

EXT.P7-4- DO DATED 14-12-2002.

EXT.P7-5-DO. DATED 25-2-2003.

EXT.P7-6- DO DATED 20-6-2003.

EXT.P7-7- DO DATED 16-2-2006

EXT,P7-8- DO DATED 16-2-2006.

EXT.P7-9- DO. DATED 11-2-2003.

EXT.P7-10- DO DATED 31-3-2003.

EXT.P8- TRUE COPY OF HTE STAY ORDER DATED 2-3-2007 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

K.BALAKRISHNAN NAIR, J.

W.P.(C).No.9483 of 2007-D

Dated this the day of March, 2007

JUDGMENT

The petitioner challenges Ext.P8 interim order passed by the second respondent on a stay application filed by him along with Ext.P4 revision petition. The penalty has been imposed on two grounds. The first ground is that he did not maintain proper accounts. The secondly, the amount deductable as tax has not been deducted by the awarder. According to the petitioner, both the grounds are unsustainable and therefore, imposition of penalty is unwarranted. So, absolute stay should have been granted. It is also pointed out that even assuming that there is some defect in the deduction, it is made by the Military Engineer of Central Government office and therefore no malice can be attributed to it. So, the maximum penalty that can be imposed will come to only Rs.10,000/-, it is submitted.

2. Heard the learned Government Pleader for the respondents.

3. I find considerable force in the submission of the petitioner. Since it is a penalty proceeding, I feel that the direction to pay 1/3 of the amount, pending revision is not justified. If the petitioner pays Rs.10,000/- (Rupees ten thousand only) before 31-3-2007, further recovery pursuant to Ext.P3 shall be kept in abeyance till the disposal of the revision petition. The second respondent shall endevour to pass final orders in the matter as expeditiously as possible, at any rate within three months from the date of production of a

copy of this judgment.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR, JUDGE.

MS